BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

EARL N. ADAMS, JR.)	
Claimant)	
VS.)	
)	Docket No. 217,823
J. W. TRUCKING INC.)	
Respondent)	
AND)	
)	
KANSAS TRUCKERS RISK MANAGEMENT)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on January 17, 1997.

Issues

Claimant argues that the Administrative Law Judge erred in failing to award temporary total benefits prior to December 2, 1996.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds that the appeal should be dismissed as it does not state a basis for jurisdiction by the Appeals Board.

Claimant's Application for Preliminary Hearing was filed December 2, 1996. The Administrative Law Judge awarded the benefits requested but ordered the temporary total disability benefits to begin on the date of the Application for Preliminary Hearing. K.A.R. 51-3-5a provides in pertinent part:

"Except in highly unusual circumstances, the administrative law judge shall not award compensation for the period of time prior to the filing date of the application."

The Administrative Law Judge clearly had jurisdiction to determine the appropriate dates of temporary total disability benefits in accordance with the above-quoted regulation. The appeal does not, therefore, state a jurisdictional issue and the Appeals Board does not have jurisdiction to review this appeal. K.S.A. 1996 Supp. 44-534a and 44-551.

Claimant's counsel argues that the Appeals Board does have jurisdiction in accordance with principles set forth in Winters v. GNB Battery, et al., ____ Kan. App. 2d ____, (11-22-1996). In that case, the Court of Appeals reversed the Appeals Board's decision not to accept jurisdiction of a decision to assess costs of appointment of a neutral physician. The current case, however, presents an issue squarely within the limited jurisdiction provisions specified in K.S.A. 44-551 for appeals from preliminary hearing orders. Because the appeal does not state a jurisdictional issue, the Appeals Board concludes it does not have jurisdiction to consider the appeal at this point.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order by Administrative Law Judge Bruce E. Moore dated January 17, 1997, remains in effect as originally entered.

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BOARD MEMBER

c: Cortland Q. Clotfelter, Wichita, KS James M. McVay, Great Bend, KS Bruce E. Moore, Administrative Law Judge Philip S. Harness, Director